

Assembly Bill No. 442

Passed the Assembly September 9, 1999

Chief Clerk of the Assembly

Passed the Senate September 9, 1999

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to add Section 16318 to the Government Code, relating to use of state funds.

LEGISLATIVE COUNSEL'S DIGEST

AB 442, Cedillo. State funds: use to discourage unionization.

Nothing in existing law prohibits recipients of state funds from using the funds to discourage unionization.

This bill would prohibit any employer of more than one person that receives state funds, as defined, from using the funds to discourage unionization by the recipient's employees or any other employees. The bill would also prohibit such an employer that derives revenue from state property through a lease, concession contract, or other agreement from discouraging unionization by his or her employees. The bill would require every contract for the payment of state funds to an employer covered by the bill to contain a covenant that the employer will comply with the bill. The bill would authorize any labor organization or collective bargaining representative to file a complaint with the Labor Commissioner for alleged violation of the bill and would require the Labor Commissioner to conduct a hearing and determine whether, by a preponderance of the evidence, it is likely that the employer has used state funds to discourage unionization. Upon making a finding that the employer has used state funds in violation of the bill, the bill would provide that the Labor Commissioner shall order the employer to keep prescribed records sufficient to show whether the employer has committed further violations of the bill. Employers subject to this recordkeeping requirement would also be required to make specified quarterly reports to the Labor Commissioner and to certify, under penalty of perjury, compliance with the bill's limitations on use of state funds. The bill would authorize the Labor Commissioner to audit the records of employers subject to the bill's recordkeeping and



reporting requirements to ensure compliance with the bill. The bill would make any employer ineligible to receive state funds if the employer has been certified by the Labor Commissioner to be in willful or material violation of the bill's recordkeeping or reporting requirements or to have failed or refused to provide records for an audit under the bill, unless and until the Labor Commissioner certifies that the employer is in full compliance. The bill would require the Labor Commissioner to adopt regulations to implement the bill.

The bill would make any employer who knowingly authorizes or permits expenditure of state funds in violation of the bill liable to the state for damages equal to double the amount of the expenditure, plus reasonable attorney's fees and costs. The bill would authorize any taxpayer to bring an action to recover those damages on behalf of the state and would entitle a prevailing taxpayer to his or her attorney's fees.

The bill would make any employer, that has been determined by a final judgment of a court to have used state funds in violation of the bill, ineligible to receive state funds for a period of 3 years from the date the judgment is entered.

The bill would not apply to payments made before January 1, 2000, to payments for goods or services provided before that date, or to contracts entered into before that date until amended, extended, or renewed. The bill would expressly provide that it does not require disclosure of names of certain private donors to specified nonprofit corporations exempt from federal income taxation.

This bill would not apply to the University of California.

The people of the State of California do enact as follows:

SECTION 1. Section 16318 is added to the Government Code, to read:

16318. (a) The Legislature finds and declares the following:



(1) It is the policy of the state declared in Section 923 of the Labor Code, and the policy of the National Labor Relations Act, to recognize the right of employees to freedom of association in the workplace and freedom of choice in who will represent employees in collective bargaining.

(2) It is the policy of this state that workers should be free to choose their bargaining representative without interference from the state.

(3) The state currently places no limitation on the use of its funds to discourage unionization, and as a result state funds have, in fact, been used to discourage unionization.

(4) The expenditure of state funds to support an employer's opposition to unionization of the employer's workers does not serve the purposes for which the state funds were provided to the recipient and, thus, the expenditure of those funds to oppose unionization is a misuse and waste of state funds.

(5) Section 9 of Article IX of the California Constitution precludes applying this section to the University of California.

(b) Therefore, it is the intent of the Legislature in enacting this act to ensure that state funds are not used to discourage employees from choosing union representation.

(c) For purposes of this section:

(1) "Employer" means any individual, government agency or entity, corporation, unincorporated association, partnership, or other legal entity that employs more than one person, but does not include the University of California.

(2) "Receive state funds" means to receive state funds pursuant to a payment to a health care provider, a grant, a competitively bid contract, or reimbursement for services, and also includes receipt by a subcontractor of payment for the performance of services purchased by or funded by the state. A manufacturer only receives state funds in connection with a sale of goods if the goods are manufactured in the state.



(3) “State funds” means any money drawn from the State Treasury or any special or trust fund of the state, and any state resources, in the form of goods or services, that are provided to any employer. “State funds” also means the value of those goods and services. “State funds” include revenues or other funds received by a party to a concession contract with the state from any third party pursuant to that contract.

(4) “Unionization” means organization of employees for the purpose of collective bargaining.

(5) A recipient of state funds is deemed to use the state funds by applying the funds to operating expenses, such as employee compensation, supplies, maintenance, or utilities, or by applying the funds to capital facilities or equipment.

(6) A use of state funds shall be deemed for the purpose of discouraging unionization if it directly or indirectly supports or is in furtherance of (A) any communication in any form that advocates or directly or by implication suggests that employees should vote against representation by a union for purposes of collective bargaining, (B) hiring or consulting legal counsel or other consultants to advise on how to deter unionization or how to impede a labor organization that represents employees from fulfilling its representation responsibilities, (C) holding meetings to influence employees not to join or form a labor organization for the purpose of collective bargaining, or (D) planning or conducting activities by employer supervisors to deter the activities of a labor organization.

(d) (1) No employer who receives state funds shall use, either directly or indirectly, those funds in whole or in part to discourage unionization by that employer’s employees or any other employees. No employer who derives revenue from property owned by the state and used by that employer through lease, concession contract, or other agreement shall discourage unionization by his or her employees who are employed on or in relation to that state property.



(2) Nothing in this section limits the right of individuals who are not supervisors, managers, consultants, attorneys, advisers, or contractors of a recipient of state funds to advocate for or against unionization in the facilities of the recipient to the extent not precluded by applicable law.

(3) Nothing in this section limits the right of any employer or union to engage in lawful activities relating to the negotiation and enforcement of a collective bargaining agreement.

(4) Every contract for the payment of state funds to an employer shall contain a covenant that the employer will comply with this section

(e) For purposes of this section, each recipient of state funds shall account for the state funds in accordance with the following:

(1) State funds designated by the state for use for, or to reimburse, a specific expenditure of the recipient shall be accounted for as being allocated to that expenditure.

(2) State funds that are not so designated shall be allocated on a pro rata basis to all expenditures of the recipient that support or are related to the purpose for which the state funds are received.

(f) The Labor Commissioner shall adopt regulations to implement the requirements of this section.

(g) (1) A labor organization or collective bargaining representative at any time may file a complaint with the Labor Commissioner alleging that an employer that has a contract with the state is in violation of paragraph (1) of subdivision (d).

(2) Within 30 days of receiving a complaint under paragraph (1), the Labor Commissioner shall conduct a hearing to determine whether the alleged violation has occurred.

(3) The Labor Commissioner shall make a determination and render a decision within 10 days following conclusion of the hearing.

(4) If the Labor Commissioner determines, by a preponderance of the evidence, that it appears likely that the employer has violated paragraph (1) of



subdivision (d), the Labor Commissioner shall order the employer thereafter to keep accurate and complete records of the employer's expenditures of all state funds received by the employer. The records shall be sufficient to show whether the employer has used state funds to discourage unionization.

(5) Each employer subject to the recordkeeping requirements of paragraph (4) during a calendar quarter shall prepare and submit to the Labor Commissioner, within 30 days following the end of the quarter, a report specifying each expenditure of state funds and each expenditure of funds to discourage unionization made by the employer during the reported quarter.

(6) The report required by paragraph (5) shall include a statement that the representations made are true, correct, and contain no material omissions of fact to the best knowledge and belief of the employer submitting the certification. A violation of this paragraph is a misdemeanor.

(7) The Labor Commissioner, on his or her own initiative or in response to a complaint the Labor Commissioner deems credible, may at any time audit the records of an employer subject to the requirements of this subdivision to ensure compliance with this section.

(8) Following a certification by the Labor Commissioner that any employer has willfully or materially failed to comply with the recordkeeping requirements of paragraph (4) or the reporting requirements of paragraph (5), or has failed or refused to promptly provide the Labor Commissioner or his or her designated representative access to the employer's records for the purpose of conducting an audit pursuant to paragraph (7), the person shall be ineligible to receive state funds until the Labor Commissioner certifies that the employer is in full compliance with those requirements.

(h) (1) Any employer who knowingly authorizes or permits an expenditure of state funds in violation of this section shall be liable to the state for civil damages equal to twice the amount of the expenditure, plus reasonable



attorney's fees and costs. Any taxpayer may bring an action to recover these civil damages on behalf of the state provided that both of the following conditions exist:

(A) The taxpayer has first served a copy of the complaint on the Attorney General with a written disclosure of substantially all material evidence and information the taxpayer possesses.

(B) The Attorney General has either notified the taxpayer that the Attorney General has agreed to bring an action to recover funds expended in violation of this section or, after 30 days, the Attorney General has failed to agree to bring an action to recover the funds expended in violation of this section.

(2) If the Attorney General agrees to bring an action to recover the funds expended in violation of this section, the action shall be brought within 60 days of notifying the taxpayer of the intent of the Attorney General to do so and the taxpayer may intervene in the action.

(3) In any action brought under paragraph (1) all of the following provisions apply:

(A) The Attorney General may intervene in any action brought by a taxpayer at any time.

(B) The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for that consent.

(C) The Attorney General shall have the primary responsibility for prosecuting any action that the Attorney General initiates or in which he or she intervenes, and shall not be bound by an act of the person bringing the action.

(D) The Attorney General may dismiss the action notwithstanding the objections of the taxpayer initiating the action if the taxpayer has been notified by the Attorney General of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(E) The Attorney General may settle the action with the defendant notwithstanding the objections of the taxpayer initiating the action if the court determines,



after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

(F) Upon a showing by the Attorney General or a defendant that unrestricted participation during the course of the litigation by the taxpayer initiating the action would interfere with or unduly delay the prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose appropriate limitations on the taxpayer's participation.

(4) In any action brought under paragraph (1) in which the defendant is found to have violated this section, the taxpayer shall recover as part of the judgment his or her reasonable attorney's fees and costs.

(5) A final judgment of a court of competent jurisdiction stating that an employer has violated paragraph (1) of subdivision (d) is a ground for debarment of state funds for three years from the date the judgment is entered.

(i) This section does not apply to state funds received by an employer (1) prior to January 1, 2000, (2) in consideration of goods supplied or services rendered prior to January 1, 2000, or (3) under a state contract entered into prior to January 1, 2000, until that contract is extended, renewed, or amended on or after January 1, 2000.

(j) Nothing in this section shall be construed to require an employer that is a nonprofit corporation exempt from federal income taxation under Section 501(c)(3) of the federal Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) to disclose the names of private donors of donations that are lawfully deductible from federal income tax payable by the private donors.

(k) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application.



Approved _____, 1999

Governor

